

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

BROADCAST MUSIC, INC.; SONY/ATV SONGS	§	
LLC d/b/a SONY/ATV TREE PUBLISHING;	§	
UNIVERSAL-MILLHOUSE MUSIC, a division of	§	
MAGNA SOUND CORP.; SONGPAINTER	§	
MUSIC; DIXIE JANE MUSIC; SONGS OF	§	
UNIVERSAL, INC.; FAIZILU PUBLISHING;	§	
SUTJUJO MUSIC; TOKECO TUNES;	§	
UNIVERSAL-SONGS OF POLYGRAM	§	
INTERNATIONAL, INC.; ESCATAWPA SONGS,	§	
	§	
Plaintiffs,	§	C.A. No.:
	§	
v.	§	
	§	
BIG CYPRESS TAVERN SOCIAL CLUB, INC.	§	
d/b/a BIG CYPRESS TAVERN and GARY P.	§	
LOYD, individually,	§	
	§	
Defendants.	§	

PLAINTIFFS' ORIGINAL COMPLAINT

Plaintiffs, by their attorneys, for their Complaint against Defendants, individually, and (collectively "Defendants") allege as follows:

JURISDICTION AND VENUE

This is a suit for copyright infringement under the United States Copyright Act of 1976, as amended, 17 U.S.C. §§ 101 *et seq.* (the "Copyright Act"). This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).

This Court has personal jurisdiction over Defendants because Defendants are residents of and/or are incorporated in this State and are conducting business in this State, including in this

District. Defendants' acts of copyright infringement are occurring in this State, including in this District, and Defendants should anticipate being haled into court in this State.

Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391 and 1400(a).

THE PARTIES

1. Plaintiff Broadcast Music, Inc. ("BMI") is a corporation organized and existing under the laws of the State of New York. BMI's principal place of business is 320 West 57th Street, New York, New York 10019. BMI has been granted the right to license the public performance rights in approximately 7.5 million copyrighted musical compositions (the "BMI Repertoire"), including those alleged herein to have been infringed.

2. The other Plaintiffs are the owners of the copyrights in the musical compositions that are the subject of this lawsuit. All Plaintiffs are joined pursuant to Fed. R. Civ. P. 17(a) and 19(a).

3. The Plaintiffs other than BMI are the owners of the copyrights in the musical compositions, which are the subject of this lawsuit. All Plaintiffs are joined pursuant to Fed. R. Civ. P. 17(a) and 19(a).

4. Plaintiff Sony/ATV Songs LLC is a limited liability company doing business as Sony/ATV Tree Publishing. This Plaintiff is the owner of a copyright in at least one of the songs in this matter.

5. Plaintiff Universal-Millhouse Music is a division of Magna Sound Corp. This Plaintiff is the owner of a copyright in at least one of the songs in this matter.

6. Plaintiff Songpainter Music is a sole proprietorship owned by Morris Davis also known as Mac Davis. This Plaintiff is the owner of a copyright in at least one of the songs in this

matter.

7. Plaintiff Dixie Jane Music is a sole proprietorship owned by Jan Crutchfield. This Plaintiff is the owner of a copyright in at least one of the songs in this matter.

8. Plaintiff Songs of Universal, Inc. is a corporation. This Plaintiff is the owner of a copyright in at least one of the songs in this matter.

9. Plaintiff Faizilu Publishing is a sole proprietorship owned by Billie Lee Crofts. This Plaintiff is the owner of a copyright in at least one of the songs in this matter.

10. Plaintiff Sutjujo Music is a partnership owned by Jimmy Seals and Ruby Jean Seals. This Plaintiff is the owner of a copyright in at least one of the songs in this matter.

11. Plaintiff Tokeco Tunes is a sole proprietorship owned by Tobey Keith Covel. This Plaintiff is the owner of a copyright in at least one of the songs in this matter.

12. Plaintiff Universal-Songs Of Polygram International, Inc. is a corporation. This Plaintiff is the owner of a copyright in at least one of the songs in this matter.

13. Plaintiff Escatawpa Songs is a partnership owned by Bradley Kirk Arnold, Robert Todd Harrell, Matthew Darrick Roberts and Christopher Lee Henderson. This Plaintiff is the owner of a copyright in at least one of the songs in this matter.

14. Defendant Big Cypress Tavern Social Club, Inc. is a corporation organized and existing under the laws of the state of Texas, which operates, maintains and controls an establishment known as Big Cypress Tavern, located at 8939 FM 729, Avinger, Texas 75630, in this district (the "Establishment"). Defendant Big Cypress Tavern Social Club, Inc. may be served with process by serving its Registered Agent, Gary P. Loyd, 4601 Horton Road, Gilmer,

Texas 75644.

15. In connection with the operation of the Establishment, Defendant Big Cypress Tavern Social Club, Inc. publicly performs musical compositions and/or causes musical compositions to be publicly performed.

16. Upon information and belief, Defendant Big Cypress Tavern Social Club, Inc. has a direct financial interest in the Establishment.

17. Upon information and belief, Defendant Gary P. Loyd is the owner of Defendant Big Cypress Tavern Social Club, Inc. with primary responsibility for the operation and management of that corporation and the Establishment. Defendant Gary Pl. Loyd may be served with process by serving him at 4601 Horton Road, Gilmer, Texas 75644 or 8939 FM 729, Avinger, Texas 75630.

18. Upon information and belief, Defendant Gary P. Loyd has the right and ability to supervise the activities of Defendant Big Cypress Tavern Social Club, Inc. and a direct financial interest in that corporation and the Establishment.

CLAIMS OF COPYRIGHT INFRINGEMENT

19. Plaintiffs repeat and reallege each of the allegations contained in paragraphs 1 through 18.

20. Plaintiffs allege seven (7) claims of willful copyright infringement, based upon Defendants' unauthorized public performance of musical compositions from the BMI Repertoire. All of the claims for copyright infringement joined in this Complaint are governed by the same legal rules and involve similar facts. Joinder of these claims will promote the convenient administration of justice and will avoid a multiplicity of separate, similar actions against Defendants.

21. Attached to this Complaint as Exhibit A is a schedule (the “Schedule”) and incorporated herein is a list identifying some of the many musical compositions whose copyrights were infringed by Defendants. The Schedule contains information on the seven (7) claims of copyright infringement at issue in this action. Each numbered claim has the following eight lines of information (all references to “Lines” are lines on the Schedule): Line 1 providing the claim number; Line 2 listing the title of the musical composition related to that claim; Line 3 identifying the writer(s) of the musical composition; Line 4 identifying the publisher(s) of the musical composition and the plaintiff(s) in this action pursuing the claim at issue; Line 5 providing the date on which the copyright registration was issued for the musical composition; Line 6 indicating the copyright registration number(s) for the musical composition; Line 7 showing the date(s) of infringement; and Line 8 identifying the establishment where the infringement occurred.

22. For each of the musical compositions identified on the Schedule, the person(s) named on Line 3 was the creator of that musical composition.

23. For each work identified on the Schedule, on or about the date(s) indicated on Line 5, the publisher(s) named on Line 4 (including any predecessors in interest), complied in all respects with the requirements of the Copyright Act and received from the Register of Copyrights Certificates of Registration bearing the number(s) listed on Line 6.

24. For each work identified on the Schedule, on the date(s) listed on Line 7, Plaintiff BMI was (and still is) the licensor of the public performance rights in the musical composition identified on Line 2. For each work identified on the Schedule, on the date(s) listed on Line 7, the Plaintiff(s) listed on Line 4 was (and still is) the owner of the copyright in the respective musical

composition listed on Line 2.

25. For each work identified on the Schedule, on the date(s) listed on Line 7, Defendants publicly performed and/or caused to be publicly performed at the Establishment the musical composition identified on Line 2 without a license or permission to do so. Thus, Defendants have committed copyright infringement.

26. The specific acts of copyright infringement alleged in the Complaint, as well as Defendants' entire course of conduct, have caused and are causing Plaintiffs great and incalculable damage. By continuing to provide unauthorized public performances of works in the BMI Repertoire at the Establishment, Defendants threaten to continue committing copyright infringement. Unless this Court restrains Defendants from committing further acts of copyright infringement, Plaintiffs will suffer irreparable injury for which they have no adequate remedy at law.

WHEREFORE, Plaintiffs pray for a judgment that:

- (a) Defendants have infringed and are infringing the above-identified copyrighted musical compositions;
- (b) Defendants' copyright infringement was willful;
- (c) Defendants, their agents, servants, employees, and all persons acting under their permission and authority, be enjoined and restrained from infringing or causing any infringement of, in any manner, the copyrighted musical compositions licensed by BMI, pursuant to 17 U.S.C. § 502;

- (d) Defendants be ordered to pay either actual damages, pursuant to 17 U.S.C. § 504(b) or statutory damages, pursuant to 17 U.S.C. § 504(c);
- (e) Defendants be ordered to pay costs, including reasonable attorneys' fees, pursuant to 17 U.S.C. § 505;
- (f) Defendants be ordered to pay pre-judgment interest to Plaintiffs on all amounts awarded and post-judgment interest until paid at the maximum lawful rate; and
- (g) That Plaintiffs have such other and further relief as is just and equitable.

Dated July 6, 2012

Respectfully submitted,

/s/ Myall S. Hawkins

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ATTORNEYS FOR PLAINTIFFS
BROADCAST MUSIC, INC., ET AL.

Schedule

Line 1	Claim No.	1
Line 2	Musical Composition	Boot Scoot Boogie a/k/a Boot Scootin' Boogie
Line 3	Writer(s)	Ronnie Dunn a/k/a Ronnie G. Dunn
Line 4	Publisher Plaintiff(s)	Sony/ATV Songs LLC d/b/a Sony/ATV Tree Publishing
Line 5	Date(s) of Registration	3/23/92
Line 6	Registration No(s).	PA 563-279
Line 7	Date(s) of Infringement	1/27/12
Line 8	Place of Infringement	Big Cypress Tavern

Line 1	Claim No.	2
Line 2	Musical Composition	Don't Tell My Heart a/k/a Achy Breaky Heart
Line 3	Writer(s)	Don Von Tress
Line 4	Publisher Plaintiff(s)	Universal - Millhouse Music, a Division of Magna Sound Corp.
Line 5	Date(s) of Registration	7/29/91
Line 6	Registration No(s).	PA 534-864
Line 7	Date(s) of Infringement	1/27/12
Line 8	Place of Infringement	Big Cypress Tavern

EXHIBIT A

Line 1	Claim No.	3
Line 2	Musical Composition	It's Hard To Be Humble
Line 3	Writer(s)	Mac Davis
Line 4	Publisher Plaintiff(s)	Morris Davis a/k/a Mac Davis, an individual d/b/a Songpainter Music
Line 5	Date(s) of Registration	3/28/80
Line 6	Registration No(s).	PA 63-687
Line 7	Date(s) of Infringement	1/27/12
Line 8	Place of Infringement	Big Cypress Tavern

Line 1	Claim No.	4
Line 2	Musical Composition	Name It After Me a/k/a Statue Of A Fool
Line 3	Writer(s)	Jan Crutchfield
Line 4	Publisher Plaintiff(s)	Jan Crutchfield, an individual d/b/a Dixie Jane Music
Line 5	Date(s) of Registration	1/8/90 4/30/62
Line 6	Registration No(s).	RE 465-345 Ep 162981
Line 7	Date(s) of Infringement	1/27/12
Line 8	Place of Infringement	Big Cypress Tavern

Line 1	Claim No.	5
Line 2	Musical Composition	Summer Breeze
Line 3	Writer(s)	James Seals a/k/a Jimmy Seals; Darrell Crofts a/k/a Dash Crofts
Line 4	Publisher Plaintiff(s)	Songs of Universal, Inc.; Billie Lee Crofts, an individual d/b/a Faizilu Publishing; Jimmy Seals and Ruby Jean Seals, a partnership d/b/a Sutjujo Music
Line 5	Date(s) of Registration	5/17/71 11/3/72
Line 6	Registration No(s).	Eu 273644 Ep 305838
Line 7	Date(s) of Infringement	1/27/12
Line 8	Place of Infringement	Big Cypress Tavern

Line 1	Claim No.	6
Line 2	Musical Composition	Should've Been A Cowboy
Line 3	Writer(s)	Toby Keith
Line 4	Publisher Plaintiff(s)	Toby Keith Covell d/b/a Tokeco Tunes; Universal-Songs Of Polygram International, Inc.
Line 5	Date(s) of Registration	3/15/93
Line 6	Registration No(s).	PA 606-001
Line 7	Date(s) of Infringement	1/27/12
Line 8	Place of Infringement	Big Cypress Tavern

Line 1	Claim No.	7
Line 2	Musical Composition	When I'm Gone
Line 3	Writer(s)	Bradley Kirk Arnold; Matthew Darrick Roberts; Robert Todd Harrell; Christopher Lee Henderson
Line 4	Publisher Plaintiff(s)	Songs of Universal, Inc.; Bradley Kirk Arnold, Robert Todd Harrell, Matthew Darrick Roberts and Christopher Lee Henderson, a partnership d/b/a Escatawpa Songs
Line 5	Date(s) of Registration	12/04/02 3/16/01
Line 6	Registration No(s).	PA 1-120-566 Pau 2-577-919
Line 7	Date(s) of Infringement	1/27/12
Line 8	Place of Infringement	Big Cypress Tavern

JS 44 (Rev. 12/07)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS Broadcast Music, Inc.

DEFENDANTS Big Cypress Tavern Social Club, Inc. d/b/a Big Cypress Tavern and Gary P. Loyd, individually

(b) County of Residence of First Listed Plaintiff New York

(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number)

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	OTHER REMEDIES	BANKRUPTCY	COURT STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPRIETARY RIGHTS <input checked="" type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
17 U.S.C. §§ 101 et. seq.

Brief description of cause:

Copyright Infringement

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

7-6-12Myra J. Hawkins

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE